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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALLSTATE NEW JERSEY
INSURANCE COMPANY a/s/o
KATHLEEN CANCEL,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Civil Action No. 3:17-2738 (FLW)(LHG)

**DEFENDANT AMAZON.COM, INC.'S
ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant Amazon.com, Inc. ("Amazon.com") hereby responds to Plaintiff's Complaint as follows:

PARTIES

1. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 1 and therefore denies the same.

2. Amazon.com admits the allegations contained in Paragraph 2 except to state that its principal place of business is located at 410 Terry Avenue North, Seattle, WA 98109-5210.

FACTS

3. Amazon.com admits only that laptop computer batteries are available for purchase by New Jersey residents through the Amazon.com marketplace and denies the remaining allegations contained in Paragraph 3.

4. Amazon.com admits only that products are available for purchase from Amazon.com and millions of third-party sellers on the Amazon.com marketplace and denies the remaining allegations contained in Paragraph 4.

5. Amazon.com admits only that products are available for purchase from Amazon.com and millions of third-party sellers on the Amazon.com marketplace and denies the remaining allegations contained in Paragraph 5.

6. Amazon.com admits only that third-party sellers are charged a fee to sell products through the Amazon.com marketplace and denies the remaining allegations contained in Paragraph 6.

7. Amazon.com admits only that third-party sellers are charged a fee to sell products through the Amazon.com marketplace and denies the remaining allegations contained in Paragraph 7.

8. Amazon.com denies the allegations contained in Paragraph 8.

9. Amazon.com admits only that third party sellers must assent to an agreement with Amazon.com before selling products on the Amazon.com marketplace, and denies the remaining allegations of Paragraph 9.

10. Amazon.com denies the allegations contained in Paragraph 10.

11. Amazon.com admits only that third party sellers are responsible for shipping their own products, unless they participate in the Fulfillment by Amazon program, in which case

Amazon.com provides certain logistics services to participants for a fee and denies the remaining allegations contained in Paragraph 11.

12. Amazon.com denies the allegations contained in Paragraph 12.

13. Amazon.com admits only that it has fulfillment centers in Robbinsville, New Jersey and Avenel, New Jersey and denies the remaining allegations contained in Paragraph 13.

14. Amazon.com admits only that it provides payment processing services, that the price charged is determined by the third-party seller, and that Amazon deducts vendor fees from vendor disbursements, and denies the remaining allegations of Paragraph 14.

15. Amazon.com admits only that the language quoted in paragraph 15 appears on its website but denies that the allegation fully and accurately characterizes it.

16. Amazon.com denies the allegations contained in Paragraph 16.

17. Amazon.com admits only that it has an A-Z Guarantee program and denies the remaining allegations contained in Paragraph 17.

18. Amazon.com denies the allegations contained in Paragraph 18.

19. Amazon.com admits only that New Jersey residents purchase products through the Amazon.com marketplace and denies the remaining allegations contained in Paragraph 19.

20. Paragraph 20 states a legal conclusion to which no response is required. To the extent that a response is required, Amazon.com denies the allegations contained in Paragraph 20.

21. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 21 and therefore denies the same.

22. Amazon.com admits only that a purchaser named Kathy Cancel, under order number 116-5718141-7465003, used her Amazon.com account to purchase a laptop battery from

Lenoge Technology (HK Limited), also known as E-life, and denies all other allegations of Paragraph 22.

23. Amazon.com admits only that the seller participated in the Fulfillment by Amazon program and that Amazon.com, for a service fee, provided certain logistical services to the seller, including shipment, and denies the remaining allegations contained in Paragraph 23.

24. Amazon.com admits only that the third-party seller listed the product at a price set by that seller, and that payment was processed by Amazon, and denies all other allegations of Paragraph 24.

25. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 25 and therefore denies the same.

26. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 26 and therefore denies the same.

27. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 27 and therefore denies the same.

28. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 28 and therefore denies the same.

29. Paragraph 29 states a legal conclusion to which no response is required. To the extent that a response is required, Amazon.com denies the allegations contained in Paragraph 29.

COUNT 1 – STRICT PRODUCTS LIABILITY

30. Amazon.com incorporates by reference its responses to the preceding paragraphs as if fully stated herein.

31. Paragraph 31 states a legal conclusion to which no response is required. To the extent that a response is required, Amazon.com denies the allegations contained in Paragraph 31.

32. Paragraph 32 states a legal conclusion to which no response is required. To the extent that a response is required, Amazon.com denies the allegations contained in Paragraph 32.

33. Paragraph 33 states a legal conclusion to which no response is required. To the extent that a response is required, Amazon.com denies the allegations contained in Paragraph 33.

34. Amazon.com denies the allegations contained in Paragraph 34.

35. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 35 and therefore denies the same.

36. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 36 and therefore denies the same.

37. Amazon.com lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 37 and therefore denies the same.

38. Amazon.com denies the allegations contained in Paragraph 38.

39. Amazon.com denies the allegations contained in Paragraph 39.

40. Amazon.com denies each and every allegation, averment, conclusion of law, and statement not specifically admitted above. Amazon also denies that Plaintiffs are entitled to any relief by statute, law, equity, or otherwise, from Amazon.com.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Complaint fails to set forth a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

The Complaint is barred, in whole or in part, by the doctrines of laches, waiver, unclean hands and/or equitable estoppel.

THIRD SEPARATE DEFENSE

The Complaint is barred by res judicata, collateral estoppel and/or the Entire Controversy Doctrine.

FOURTH SEPARATE DEFENSE

The Complaint is barred by the applicable statute of limitations.

FIFTH SEPARATE DEFENSE

Plaintiff's alleged injuries and damages, if any, were caused by acts or omissions of third-persons or entities over which Amazon.com had no control.

SIXTH SEPARATE DEFENSE

Plaintiff's claims are barred as a result of its failure to mitigate damages.

SEVENTH SEPARATE DEFENSE

The injuries and damages alleged by Plaintiff herein were due to the contributory and/or comparative negligence of subrogor, thereby barring Plaintiff from recovery by operation of the Comparative Negligence Act, *N.J.S.A. 2A:15-5-1, et seq.*

EIGHTH SEPARATE DEFENSE

Plaintiff's claims are barred by the doctrine of assumption of the risk.

NINTH SEPARATE DEFENSE

Plaintiff's alleged injuries and damages, if any, were not proximately caused by the use of any of Amazon.com's products, by any products sold, marketed, or distributed by Amazon.com, or by any acts or omissions on the part of Amazon.com.

TENTH SEPARATE DEFENSE

Plaintiff's alleged injuries and damages, if any, were caused or contributed to, directly and proximately, in whole or in part, by misuse, unauthorized use, unintended use, unforeseeable use and/or improper use of the product at issue.

ELEVENTH SEPARATE DEFENSE

Plaintiff is barred from recovery because the product alleged to have caused the damages was altered from its original condition.

TWELFTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the danger, or potentiality of danger, concerning the product at issue, was open and obvious and/or generally known and recognized.

THIRTEENTH SEPARATE DEFENSE

If Plaintiff sustained the damages alleged in the Complaint, which is denied, there was an intervening, superseding cause or causes leading to these alleged damages; and therefore, any action on the part of Amazon.com was not the proximate and/or competent producing cause of the alleged damages.

FOURTEENTH SEPARATE DEFENSE

Amazon.com incorporates those defenses enumerated in the New Jersey Product Liability Act, *N.J.S.A. 2A:58C-1, et seq.*

FIFTEENTH SEPARATE DEFENSE

Plaintiff's claims are subsumed and/or barred by the New Jersey Product Liability Act, in whole or in part.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by the Communications Decency Act, 47 USC § 230.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by the laws of other jurisdictions which may apply in this case.

EIGHTEENTH SEPARATE DEFENSE

Amazon.com reserves the right to assert any additional defenses and claims of avoidance as may be appropriate based upon facts or issues disclosed during the course of additional investigation and discovery.

NINETEENTH SEPARATE DEFENSE

Plaintiff's claims are subject to arbitration under the arbitration provision in the Amazon.com *Conditions of Use*.

REQUEST FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Complaint, Amazon.com requests that the Complaint herein be dismissed in its entirety, with prejudice, that judgment be entered in favor of Amazon.com, against Plaintiff, that any and all claims for damages of any sort or nature be denied, and that Amazon.com be awarded costs, attorneys' fees, and all other relief as is just and proper.

Dated: April 28, 2017

Respectfully submitted,

s/ Beth S. Rose

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*Attorneys for Defendant
Amazon.com, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached **AMAZON.COM, INC.'S ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT** has been served via ECF this April 28, 2017 on all counsel of record.

s/ Beth S. Rose
BETH S. ROSE